



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Suzanne Lee Chan, Vice Mayor
Anu Natarajan
Bill Harrison

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Annabell Holland, Interim Assistant City
Manager/Parks & Recreation Director

Dawn G. Abrahamson, City Clerk
Robert Beyer, Interim Community Dev. Director
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Mary Kaye Fisher, Interim Human Resources Dir.
Norm Hughes, City Engineer
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Lori Taylor, Economic Development Director
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Ceremonial Items
3. Consent Calendar
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
JANUARY 4, 2011
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CEREMONIAL ITEMS

- 2.1 Oath of Office and Installation of Newly Appointed Councilmember
- 2.2 Comments by Newly Appointed Councilmember

3. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 3.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 3.2 *Approval of Minutes – None.*
- 3.3 *EMINENT DOMAIN HEARING – WARREN AVENUE GRADE SEPARATION PROJECT (PWC8074)
Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Property located at Warren Avenue and Kato Road (Assessor's Parcel Number 519-0950-005-03). All Property Rights Required are Needed for the Warren Avenue Grade Separation Project.*

Contact Person:

Name: Randy Sabado

Title: Real Property Manager

Dept.: Community Development

Phone: 510-494-4715

E-Mail: rsabado@fremont.gov

Jim Pierson

Director

Transportation & Operations

510-494-4722

jpierson@fremont.gov

RECOMMENDATION:

- 1. Conduct a hearing.*
- 2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity require the acquisition of the subject properties, and authorize the commencement of eminent domain proceedings.*

4. PUBLIC COMMUNICATIONS

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – None.

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS – None.

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS – None.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Appointments and Reappointments to advisory bodies

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT

Reception in Council Chambers for Incoming Appointed Official
(30 minutes approx.)



**REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING**

JANUARY 4, 2011

***3.3 EMINENT DOMAIN HEARING – WARREN AVENUE GRADE SEPARATION PROJECT (PWC8074)**

Consideration of Adoption of Resolution of Necessity Authorizing Filing of Eminent Domain Action to Acquire Property located at Warren Avenue and Kato Road (Assessor's Parcel Number 519-0950-005-03). All Property Rights Required are Needed for the Warren Avenue Grade Separation Project.

Contact Person:

Name:	Randy Sabado	Jim Pierson
Title:	Real Property Manager	Director
Dept.:	Community Development	Transportation & Operations
Phone:	510-494-4715	510-494-4722
E-Mail:	rsabado@fremont.gov	jpierson@fremont.gov

Executive Summary: The purpose of this report is to recommend that the Council adopt a Resolution of Necessity authorizing the filing of an eminent domain action for the property located at Warren Avenue and Kato Road (Assessor's Parcel Number 519-0950-005-03), which is needed for the Warren Avenue Grade Separation Project (PWC8074)

BACKGROUND: The Mission Warren Truck-Rail Program refers to a collection of separate projects being undertaken by the City of Fremont, Alameda County Transportation Authority (ACTA), Santa Clara Valley Transportation Authority (VTA) and Caltrans. These improvements will provide a critical link to I-880, connect commercial areas in the City, and improve traffic flow by separating local streets and regional traffic and mass transportation movements.

One such project, the Interchange Reconstruction Project (IRP), has been divided into two phases. Phase 1A included the widening of I-880 between the Interchange and Dixon Landing Road, all of the ramps to and from Mission Boulevard and I-880, and the extension of East Warren Avenue over I-880 to connect to West Warren Avenue. This phase was completed in June 2009. Phase 1B includes the widening of Mission Boulevard between I-880 and Warm Springs Boulevard, as well as the replacement of ramps at Mission and Kato Road that were removed as part of Phase 1A.

Another project, the Warren Avenue Grade Separation Project, will depress Warren Avenue under two Union Pacific Railroad (UPRR) tracks between Kato Road and Warm Springs Boulevard immediately adjacent to and south of Mission Boulevard. This is the Grade Separation Project for which the subject property is being acquired. The eastern UPRR track is now owned by the Santa Clara Valley Transportation Authority (VTA) and the corridor will be used for the Silicon Valley Rapid Transit (BART) project. A third project, separate from IRP and the Warren Avenue Grade Separation Project needed by VTA, involves modifying truck access and freight access to a private truck rail materials transfer business currently located on VTA and UPRR property.

The Warren Avenue Grade Separation, the relocation of freight facilities, and the widening of Mission Boulevard are tied together by the UPRR track realignment required for each project and, therefore, the three must be closely coordinated and designed by a single entity. There are four agencies associated with these projects: Caltrans, ACTA, the City and VTA. Based on agreements between these agencies

VTa is managing the final design, right-of-way acquisition, and utility relocation and construction efforts for these projects. The City is performing most of the right-of-way acquisitions for the Grade Separation Project.

The Grade Separation Project requires property and property interests from eight private property owners, in addition to a variety of parcels from public property owners such as VTA, and Alameda County Flood Control and Water Conservation District, and public utilities such as AT&T and Union Pacific Railroad. On November 3, 2009, February 2, 2010 and July 27, 2010, the City Council approved resolutions of necessity to file eminent domain actions to acquire property interests from five of the eight private property owners, and agreements have now been reached with all but one of the private property owners. The City has not been able to reach an agreement with AT&T, and with this report staff recommends Council adopt a Resolution of Necessity to acquire the necessary property and property interests from the remaining owner.

Discussion/Analysis:

THE SUBJECT PROPERTY:

The property that is the subject of this of Resolution of Necessity is located on Warren Avenue near Kato Road and is owned by AT&T Communications of California, Inc. It is a vacant and unimproved 1,249 square foot lot. It is rectangular in shape and fronts on Warren Avenue, but it is not independently developable as its dimensions (approximately 25 feet by 49.99 feet) severely limit the development of the property.

Three (3) property interests are required from the subject property for the Project: 1) a 1,249 square feet Public Service Easement (PSE) for tiebacks to be used during the construction of a Deep Soil Mix (DSM) wall and relocation of a waterline; 2) a 1,249 square feet Temporary Construction Easement (TCE) for construction activities; and 3) a 25 linear foot Restricted Access Easement (RAE) for restricting access onto Warren Avenue.

The temporary and permanent property interests, as shown on the attached Exhibit "A", impact the entire parcel, but since the site is vacant, unimproved and has no existing AT&T facility, the impacts are considered to be minimal.

On July 23, 2009, the City's formal written offer to purchase the property rights was transmitted to AT&T's representative. After the offer was made, the Project team made the determination that the Warren Avenue Grade Separation Project construction period needed to be revised, and the required temporary construction easement also needed to be revised. A revised appraisal was performed to reflect these changes. On August 4, 2010, the City transmitted its revised formal written offer to purchase the required property rights to AT&T's representative. Negotiations have been ongoing with AT&T's representatives, but a mutually acceptable agreement has not yet been reached; however, staff is hopeful that the City and AT&T can reach an agreement. Moreover, **AT&T staff has recommended that the City file an eminent domain action to acquire the required property interests since the California Public Utilities Commission must approve any settlement outside of an eminent domain action, which can take some time.** Thus, to secure the right-of-way necessary to meet the Grade Separation Project construction schedule, staff requests that the City Council consider the adoption of a Resolution of Necessity authorizing the commencement of eminent domain proceedings for the subject property.

THE PROPOSED RESOLUTION OF NECESSITY: Council adoption of a Resolution of Necessity, by four-fifths vote with the following findings, based on the evidence noted below, is required for the initiation of the proposed eminent domain action:

1. The public interest and necessity require the proposed project.

The need and necessity of the proposed project are consistent with the City's long term General Plan. Traffic study findings conducted prior to design of the project support the Warren Avenue Grade Separation Project. A significant amount of traffic utilizes Warren Avenue to access Mission Boulevard and I-880, and with the completion of Phase 1A, Warren Avenue is now a key connector between the east and west sides of I-880.

With the existing at-grade crossing, train traffic frequently blocks vehicular traffic, causing significant congestion along Warren Avenue and Kato Road. The Grade Separation Project as proposed will eliminate the existing at-grade railroad/street crossing at Warren Avenue. Train blocking and crossing closures due to train traffic will therefore be avoided. The Grade Separation Project will result in improved traffic flow on Warren Avenue, Kato Road and nearby cross-streets, and alleviate traffic congestion in the City.

2. The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

City staff has been studying and working with VTA, Caltrans and ACTA on alternative designs for the Warren Avenue Grade Separation Project. A matrix of alternative design configurations for the Grade Separation of the Warren Avenue portion of the project was considered, including a railroad overpass or underpass. One such alternative considered leaving the street at-grade and depressing the railroad tracks as a design alternative. However, this alternative is not viable. Union Pacific Railroad (UPRR) does not support this alternative, and the City has no authority to force UPRR to agree to depressed rails. Even if UPRR were to agree to the depressed rail alternative, the future BART extension tracks would also have to be depressed and the cost of clearance and operational requirements would have significant impacts to the City's operating right-of-way. The Grade Separation Project as planned will thus be a benefit to the residents of the City and the region as a whole, while impacting only eight private property owners.

3. The property described in the resolution of necessity is necessary for the proposed project.

As noted, numerous alternatives for the Grade Separation Project were studied, and it was determined that the Grade Separation Project as planned provided the greatest benefit to the residents of the City and the region as a whole. The noted acquisitions are necessary for the Grade Separation Project as planned. The City is required by State law to conform the parcels back to the best functional utility so that the property owners are not left with a landlocked or limited parcel.

4. The offer required by Government Code Section 7267.2 has been made to all owners of record.

Staff made the required written offer to the representative of the owner of record based on an approved appraisal of the fair market value of the property and property interests necessary for the Grade Separation Project on July 23, 2009. A revised offer was made on August 4, 2010. The offers included a written statement containing detail sufficient to indicate the basis for the offer as required by Government Code section 7267.2, and an informational pamphlet setting out the

eminent domain process and the property owner's rights. Written Notices of the City's Intent to Pass a Resolution of Necessity, setting forth the date, time and location of the City Council meeting to consider adopting a Resolution of Necessity, were mailed to the owner of record, and its representatives and counsel on November 18, 2010.

FISCAL IMPACT: As noted in the Background section of this report, the City has entered into an agreement with VTA and ACTA to coordinate funding, design and construction of the Grade Separation, Freight Rail Relocation, and IRP projects. The City's maximum contribution is \$10,313,476. These funds are appropriated and available for the acquisition costs of the subject property. The City has made an offer to the property owner of \$ 7,300 based upon the City's revised appraisal.

ENVIRONMENTAL REVIEW: The Warren Avenue Grade Separation project is statutorily exempt from the California Environmental Quality Act because it will eliminate existing railroad grade crossings. A Notice of Exemption for the project was filed by the City with the Alameda County Clerk on July 3, 2002.

ENCLOSURES:

- [Draft Resolution](#)
- [Location Map](#)
- [Aerial photograph](#)

RECOMMENDATION:

1. Conduct a hearing.
2. Adopt a Resolution of Necessity making the findings, determine that the public interest and necessity require the acquisition of the subject properties, and authorize the commencement of eminent domain proceedings.

6.1 Report Out from Closed Session of Any Final Action

8.1 Council Referrals

8.1.1 MAYOR WASSERMAN REFERRAL: Appointments and Reappointments to advisory bodies with terms expiring as follows:

Appointments:

<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Human Services Commission	Chui-Wa Leung	December 31, 2014
Recreation Commission	Pavan Vedere	December 31, 2012
East Bay Regional Park Liaison	Frank Pirrone (representing Recreation Commission)	December 31, 2011
	Larry Thompson (Alternate, representing Recreation Commission)	December 31, 2013

Reappointments:

<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Human Relations Commission	Anish Dave	December 31, 2014
	Phong H. La	December 31, 2014
Library Commission	Deepinder (Ruchi) Sahota	December 31, 2014
	Tariq Ali	December 31, 2014
Planning Commission	Lisa Quan	December 31, 2014
<i>Advisory Body</i>	<i>Appointee</i>	<i>Term Expires</i>
Recreation Commission	Stephen Waterhouse	December 31, 2014
Redevelopment Agency	Tim Tran	December 31, 2014
Relocation Appeals Board	Josh Kitta	December 31, 2014
	Greg Bonaccorsi	December 31, 2014
	Maryanne Koller	December 31, 2014
Senior Citizens Commission	Eeshwari Vaidya	December 31, 2014
	Joe Bischofberger	December 31, 2014
	Amrit Chugh	December 31, 2014
Youth Advisory Commission	Alankrita Dayal	December 31, 2012
	Moniyka Sachar	December 31, 2012
	Neha Pal	December 31, 2012
	Yash Pal	December 31, 2012
	Edward Nguyen	December 31, 2012
	Sabrina Merchant	December 31, 2012

ENCLOSURES: [Applications submitted by Chui-Wa Leung and Pavan Vedere](#)

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC.....	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
January 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 18, 2011	TBD	Work Session	Council Chambers	Live
January 25, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 15, 2011	TBD	Work Session	Council Chambers	Live
February 22, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 15, 2011	TBD	Work Session	Council Chambers	Live
March 22, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 5, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 12, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
April 19, 2011	TBD	Work Session	Council Chambers	Live
April 26, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 3, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 10, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 17, 2011	TBD	Work Session	Council Chambers	Live
May 24, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
May 31, 2011 (5 th Tuesday)		No Council Meeting		